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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 93.

J. W. SPRINGSTEAD, J. C. BURWELL, W. A. FULTON, ET AL., PLAINTIFFS IN ERROR,

vs.

CRAWFORDSVILLE STATE BANK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

FILED SEPTEMBER 11, 1911.

(22,854)

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INDEX.

	Original.	Print
Caption	a	1
Praecipe for summons	1	1
Summons and return	2	1
Appearance of defendants	4	2
Amended declaration	5	3
Exhibits to declaration—notes	7	4
Motion for judgment by default	9	5
Default	10	6
Minutes of trial	11	6
Verdict and judgment	11	6
Petition for writ of error	13	7
Order allowing writ of error	14	8
Assignment of errors	15	8
Writ of error (copy)	17	9
Citation and service (copy)	18	10
Clerk's certificate	20	11
Writ of error (original)	21	12
Citation and service (original)	22	13

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 19, 1913.

a *Caption.*

Be it remembered, That at a term of the United States Circuit Court, in and for the Fifth Circuit and the Southern District of Florida, held at Tampa, in said District, on the Second Monday of February, A. D. 1911, the following proceedings were had and the following case came on for a trial and was tried, viz.:

1 *Precipe for Summons.*

In the Circuit Court of the United States, Southern District of Florida.

CRAWFORDSVILLE STATE BANK, a Corporation Organized and Existing under the Laws of the State of Indiana, Plaintiff,

vs.

J. W. SPRINGSTEAD, J. C. BURWELL, W. A. FULTON, W. P. TUCKER, W. HOP SMITH, H. C. MICKLER, and W. T. AYERS, Defendants.

The Clerk of the Circuit Court of the United States for the Southern District of the State of Florida will please issue summons ad respondendum in the above entitled cause returnable to January Rule Day, 1910, and oblige.

P. O. KNIGHT,
F. P. COOGLER,
Attorneys for Plaintiff.

Endorsed: "No. 33. In the United States Circuit Court, Southern District of Florida. Crawfordsville State Bank, a corporation organized and existing under the Laws of the State of Indiana, Plaintiff, vs. J. W. Springstead et al., Defendants. Precipe for Summons. Filed this 1st day of December, A. D. 1909. E. O. Locke, Clerk, by H. L. Crane, Deputy Clerk."

2 *Summons.*

United States Circuit Court, Fifth Circuit, Southern District of Florida.

The President of the United States of America to the Marshal of the Southern District of Florida, Greeting:

You are hereby commanded to summon J. W. Springstead, J. C. Burwell, W. A. Fulton, W. P. Tucker, W. Hop Smith, H. C. Mickler and W. R. Ayers, Defendants, if they may be found in your District to be and appear before the Circuit Court of the United States, Fifth Circuit, and Southern District of Florida, at the Rule day of said Court to be held at the Clerk's office in the City of Tampa, on the first Monday of January next, to answer unto the Crawfordsville

State Bank, a corporation organized and existing under the laws of the State of Indiana, Plaintiff, in the said Court, on a plea of Assumpsit, wherein the Plaintiff claims damages to the amount of Four Thousand Dollars.

And have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of this Court, at the City of Tampa, in said District, this first day of December, A. D. 1909.

E. O. LOCKE, *Clerk.*
By H. L. CRANE,
Deputy Clerk.

P. O. KNIGHT AND
F. B. COOGLER,
Plaintiff's Attorneys.

Endorsed: "No. 33. United States Circuit Court, Southern District of Florida. Crawfordsville State Bank, a corporation, etc., vs. J. W. Springstead et al. Summons. Issued Dec. 1st, 1909. Returnable Jan'y 3, 1910. Returned and filed December 10th, 1909. E. O. Locke, Clerk, By H. L. Crane, Deputy Clerk. Ent. Pg. 23 P. D.

Also endorsed: "Received the within summons Dec. 2d, 1909, at Tampa, Fla., and on Dec. 3, 1909, in and near Brooksville, Fla., served the same on the within named J. W. Springstead,
3 J. C. Burwell, W. P. Tucker and W. B. Ayers, by delivering to each of them personally a certified copy thereof, and on the within named W. A. Fuller and H. C. Micklet, by leaving with their wives at their usual places of abode a certified copy thereof, and on the within named W. Hop Smith, by leaving with his Son an adult person at his usual place of abode a certified copy thereof. John F. Horr, United States Marshal, By C. B. Bristol, Deputy U. S. Marshal."

4 *Appearance.*

In the Circuit Court of the United States in and for the Southern District of Florida.

Assumpsit. Damages, $1,000.00.

CRAWFORDSVILLE STATE BANK, a Corporation
vs.
J. C. BURWELL et al.

Appearance of Defendants.

Now come the defendants in the above stated case, by Davant & Davant, their attorneys, on this the Rule day in January, 1910, and enter their appearance in the above case.

DAVANT & DAVANT,
Defendants' Attorneys.

Endorsed: "In the Circuit Court of the United States in and for the Southern District of Florida. Crawfordsville State Bank, a corporation, vs. J. W. Springstead, J. C. Burwell, et al. Assumpsit. Dam. $1,000. Defendants' Appearance. Filed this 3d day of January, A. D. 1910. E. O. Locke, Clerk. By H. L. —, Deputy Clerk. U. S. Circuit Court."

5 In the United States Circuit Court, Southern District of Florida.

Assumpsit. Damages, $1,000.

CRAWFORDSVILLE STATE BANK, a Corporation Organized and Existing under the Laws of the State of Indiana, Plaintiff,

vs.

J. W. SPRINGSTEAD, J. C. BURWELL, W. A. FULTON, W. P. TUCKER, W. HOG SMITH, H. C. MICKLER and W. R. AYERS, Defendants.

The Crawfordsville State Bank, a corporation organized and existing under the laws of the state of Indiana, and a citizen and resident of the State of Indiana, Plaintiff, by its undersigned attorneys, sues J. W. Springstead, J. C. Burwell, W. A. Fulton, W. P. Tucker, W. Hog Smith, H. C. Mickler and W. R. Ayers, defendants, all being citizens and residents of the State of Florida, in an action of assumpsit, and thereupon plaintiff alleges and says:

That the defendants, on the 22nd day of January, 1906, by their joint and several promissory note, now overdue, jointly and severally promised to pay to J. Crouch and Son or their order One Thousand ($1,000) dollars on October 1st, 1909, together with interest thereon at the rate of eight per cent per annum, interest payable annually, together with reasonable attorney's fees if suit was brought on said note, payable at the Hernando State Bank of Brooksville, Florida, and that J. Crouch & Son, before maturity and for a valuable consideration endorsed and delivered the said note to the plaintiff, and the said note was duly presented for payment at the Hernando State Bank of Brooksville, Florida, but the said defendants did not, nor did either of them, nor did any other person then pay the sum of $1,000 and interest as specified in the said note.

6 For a Second Count, Plaintiff says: That the defendants, on the 22nd day of January, 1906, by their joint and several promissory note now over due, jointly and severally promised to pay to J. Crouch & Son or their order One Thousand ($1,000) dollars on October 1st, 1908, together with interest thereon at the rate of eight per cent per annum, interest payable annually together with reasonable attorney's fee if suit was brought on said note, payable at the Hernando State Bank of Brooksville, Florida, and that J. Crouch & Son before maturity and for a valuable consideration endorsed and delivered the said note to the plaintiff; that said note was duly presented for payment at the Hernando State Bank of Brooksville, Florida, but the said defendants did not, nor did either

of the-, nor did any other person then pay the sum of $1,000 and interest as specified in the said note. It is further shown unto the Court that the defendant H. C. Mickler intended to sign the said note as H. C. Mickler but in writing his said name it was through mistake written P. H. C. Mickler, whereas it was intended as only J. C. Mickler.

Wherefore plaintiff brings this suit and claims the sum of Two Thousand ($2,000) dollars, with interest thereon at the rate of eight per cent per annum from January 22nd, 1906, until paid, interest payable annually, together with reasonable attorney's fees for bringing this suit.

And plaintiff claims damages in the sum of Four Thousand ($4,000) dollars.

P. O. KNIGHT.
F. B. COUGLER.
Attorneys for Plaintiff.

7 Copy of Notes Sued on.

$1,000.00. Due Oct. 1st, 1908.

BROOKSVILLE, FLORIDA, *Jan.* 22, 1906.

On October 1st, 1908 after date, for value received we or either of us promise to pay to the order of J. Crouch & Son One Thousand Dollars at the Hernando State Bank of Brooksville, Florida, with interest at the rate of eight per cent per annum from date until paid, interest payable annually. If suit is brought on this note we promise and agree to pay a reasonable attorney's fees. The drawers and endorsers severally waive presentment for payment, protest, notice of protest and non-payment of this note, and to secure the payment of this note the right is expressly waived to claim any and all exemptions allowed by the Constitution and Laws of the State of Florida or any other state.

J. W. SPRINGSTEAD.
O. W. RICE.
A. F. BURNS.
J. C. BURWELL.
S. E. MICKLER.
W. A. FULTON.
W. P. TUCKER.
W. HOP SMITH.
M. P. & H. C. MICKLER.
W. R. AYERS.

[On left margin:] Lafayette Stock Farm, Lafayette, Indiana, U. S. A.

(Endorsed:) Pay Crawfordsville State Bank. J. Crouch & Son.

8 $1,000.00. Due Oct. 1st. 1909.

BROOKSVILLE, FLORIDA. *Jan.* 22, 1906.

On October 1st 1909 after date, for value received we or either of us promise to pay to the order of J. Crouch & Son One Thousand Dollars at the Hernando State Bank of Brooksville, Florida, with interest at the rate of eight per cent per annum from date until paid, interest payable annually. If suit is brought on this note we promise and agree to pay a reasonable attorney's fees. The drawers and indorsers severally waive presentment for payment, protest, notice of protest and non-payment of this note, and to secure the payment of this note the right is expressly waived to claim any and all exemption allowed by the Constitution and the Laws of the State of Florida or any other State.

J. W. SPRINGSTEAD.
O. W. RICE.
A. F. BURNS.
J. C. BURWELL.
S. E. MICKLER.
W. A. FULTON.
W. P. TUCKER.
W. HOP SMITH.
M. P. & H. C. MICKLER.
W. R. AYERS.

[On left margin:] Lafayette Stock Farm, Lafayette, Indiana, U. S. A.

Endorsed: "In the United States Circuit Court, Southern District of Florida. Crawfordsville State Bank vs. J. W. Springstead et al. Amended Declaration. Filed this 7th day of March, A. D. 1910 E. O. Locke, Clerk. By H. L. Crane, Deputy Clerk."

9 *Precipe for Default.*

In the United States Court in and for the Southern District of Florida.

CRAWFORDSVILLE STATE BANK, a Corporation,
vs.
J. W. SPRINGSTEAD et al.

Now comes the Plaintiff in the above cause by its attorney, P. O. Knight, and finding that the defendants and each of them, have failed to file any plea or demurrer to the amended declaration, moves the Court for a judgment by default against said defendants, and each of them, for want of such plea or demurrer.

P. O. KNIGHT,
Attorney for Plaintiff.

Endorsed: "In the U. S. Court, Southern District of Florida, Fifth Judicial Circuit. Crawfordsville State Bank vs. J. W. Springstead et al. Praecipe for Default. Filed this 4th day of April, A. D. 1910. E. O. Locke, Clerk, By H. L. Crane, Deputy Clerk."

10 *Default.*

In the United States Circuit Court, Southern District of Florida.

Assumpsit. Damages, $1,000.00.

CRAWFORDSVILLE STATE BANK, a Corporation, Plaintiff,
vs.
J. W. SPRINGSTEAD, J. C. BURWELL, W. A. FULTON, W. P. TUCKER, W. HOE SMITH, H. C. MICKLER and W. R. AYERS, Defendants.

And now on this 4th day of April, A. D. 1910, the same being the first Monday and rule day, in said month, came the plaintiff by its attorney, P. O. Knight, Esq., and finding no plea or demurrer entered by the defendants herein, moves the Court for a judgment by default against said defendants.

Whereupon it is ordered that judgment by default be and the same is rendered against the said defendants and in favor of the said plaintiff for want of such plea or demurrer.

E. O. LOCKE, *Clerk.*
By H. L. CRANE,
Deputy Clerk.

Endorsed: "U. S. Circuit Court, Southern District of Florida. Crawfordsville State Bank, a corporation, vs. J. W. Springstead et al. Default. Filed this 4th day of April, A. D. 1910. E. O. Locke, Clerk, By H. L. Crane, Deputy Clerk."

11 THE UNITED STATES OF AMERICA,
Southern District of Florida:

At a stated term of the Circuit Court of the United States within and for the Southern District of Florida, begun and had in the court rooms, at the city of Tampa, in said district, on the second Monday of February, A. D. 1911.

Present: The Honorable James W. Locke, District Judge.

On Friday the 17th day of February, 1911, among the proceedings had were the following, to-wit:

CRAWFORDSVILLE STATE BANK
vs.
J. W. SPRINGSTEAD et al.

Defendants move, ore tenus, to dismiss for lack of jurisdiction, and motion is argued and denied.

On Saturday, the 18th day of February, 1911.

* * * * * * *

CRAWFORDSVILLE STATE BANK
vs.
J. W. SPRINGSTEAD et al.

Default having been entered herein now comes a jury to-wit.

* * * * * * *

And again comes the jury and return their verdict, viz:
"We, the Jury, find for the plaintiff and assess its damages at Twenty-nine Hundred Dollars, and an Attorney's fee of Two Hundred and Ninety Dollars.
So say we all.

S. J. SIMMONS, *Foreman.*"

Whereupon, it is considered by the Court, that the Crawfordsville State Bank, a corporation, Plaintiff, do have, receive and
12 recover from J. W. Springstead, J. C. Burwell, W. A. Felton, W. P. Tucker, W. Hop Smith, H. C. Mickler and W. R. Ayers, Defendants, Thirty one hundred and Ninety Dollars for Damages by Plaintiff sustained, as well as $53.40/100 Dollars for costs in this behalf expended; for which execution may issue.

13 In the Circuit Court of the United States in and for the Southern District of Florida.

Assumpsit. Damages, $1,000.00.

THE CRAWFORDSVILLE STATE BANK, a Corporation,
vs.
J. W. SPRINGSTEAD, J. C. BURWELL, W. A. FELTON, W. P. TUCKER, W. HOP SMITH, H. C. MICKLER, and W. R. AYERS.

Petition for Allowance of Appeal from Circuit Court to the Supreme Court of the United States Direct on Question of Jurisdiction.

Your Petitioners, J. W. Springstead, J. C. Burwell, W. A. Felton, W. P. Tucker, W. Hop Smith, H. C. Mickler, and W. R. Ayers, the Defendants in the above stated cause, respectfully represent that there is manifest error committed, to the injury of the petitioners, by the final judgment rendered in this case the eighteenth day of February, A. D. 1911, because the said Court held that it was within the jurisdiction of the said Court to render the said judgment, whereas the said Court was without jurisdiction to render the said judgment because the amount involved in said cause exclusive of interest and costs did not exceed the sum of two thousand dollars and because the said Court was without jurisdiction to try the said cause and to render judgment therein.

Wherefore, your Petitioners J. W. Springstead, J. C. Burwell,

W. A. Fulton, W. P. Tucker, W. Hop Smith, H. C. Mickler, and W. R. Ayers, considering themselves aggrieved, pray an order granting a writ of error from the said final judgment as aforesaid to the Supreme Court of the United States, as authorized by Section 5 of the act of Congress of the United States approved March 3, 1891, and pray this Honorable Court that said writ of error be allowed solely upon said question of jurisdiction, and that a transcript of so much of the record, proceedings and papers upon which said judgment was made and rendered as may be necessary to present
11 said question of jurisdiction on writ of error, duly authenticated, may be sent to the Supreme Court of the United States.

Your Petitioners herewith file and offer bond in the penal sum of four thousand dollars, and ask that the same be approved and that the said writ of error be allowed.

DAVANT & DAVANT,
Defendants' Attorneys.

Order Allowing Writ of Error.

The above petition coming on to be heard, and it appearing that final judgment has been entered against the said Petitioners as Defendants in the above stated cause, and the said Defendants having prayed writ of error to the Supreme Court of the United States on the question of jurisdiction, it is now ordered that the said writ of error in the said cause to the Supreme Court of the United States be allowed on that question only, and it is further ordered that so much of the record and proceedings and papers upon which said judgment was rendered as are necessary to present the said question of jurisdiction and no more, be included in the record on said writ of error. This July 5th A. D. 1911.

WM. B. SHEPPARD, *Judge.*

Filed July 11th, 1911. E. O. Locke, Clerk.

15 In the Circuit Court of the United States in and for the Southern District of Florida.

Assumpsit. Damages, $[illegible].

THE CRAWFORDVILLE STATE BANK, a Corporation,
vs.
J. W. SPRINGSTEAD, J. C. BURWELL, W. A. FULTON, W. P. TUCKER, W. HOP SMITH, H. C. MICKLER, and W. R. AYERS.

Assignment of Errors Presented with Petition for Allowance of Writ of Error.

Now comes J. W. Springstead, J. C. Burwell, W. A. Fulton, W. P. Tucker, W. Hop Smith, H. C. Mickler, and W. R. Ayers, the defendants in the above stated case and upon filing of petition for al-

lowance of writ of error to the Supreme Court of the United States, and say that in the above entitled matter there is manifest error in this, to wit:

I.

That the Circuit Court of the United States, Fifth Circuit, Southern District of Florida, erred in holding that the said Court had jurisdiction to try and determine the said cause, whereas said Court should have held that the said cause was not within the jurisdiction of the Court and should have dismissed said cause for said reason.

II.

That the said Circuit Court of the United States, Fifth Circuit, Southern District of Florida, erred in holding that the said Court had jurisdiction to enter judgment by default against the defendants therein, whereas the said Court should have held that said cause was not within the jurisdiction of said Court and should have dismissed same.

16

III.

That the said Circuit Court of the United States, Fifth Circuit, Southern District of Florida erred in entering final judgment herein over the objection of the defendants and in holding that the said Court had jurisdiction to enter said final judgment, whereas said Court should have held that the said cause was not within the jurisdiction of the said Court and should have dismissed the said cause.

DAVANT & DAVANT,

Counsel for Appellants and Defendants in Lower Court.

In the Circuit Court of the United States in and for the Southern District of Florida. The Crawfordsville State Bank, a corporation, vs. J. W. Springstead et al. Assumpsit; damages $1,000.00. Petition for allowance of writ of error to United States Supreme Court, order of same, and assignment of errors on same. Filed July 11, 1911. E. O. Locke, Clerk. Davant & Davant, Counsel for Petitioners.

17 UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable the Judge of the Circuit Court of the United States for the Fifth Circuit, Southern District of Florida, Greeting:

Because in the Record and Proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, or some of you, between Crawfordsville State Bank, a corporation, Plaintiff, Defendant in Error, J. W. Springstead, J. C. Burwell, W. A. Fulton, W. P. Tucker, W. Hoe Smith, H. C. Mickler, and W. E. Ayers, Defendants, Plaintiffs in Error, a manifest error hath happened, to the great damage of the said J. W. Springstead et al., Defendants, Plaintiffs in Error, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected,

and full and speedy justice done to the parties aforesaid in this behalf, Do Command You, if judgment be therein given, that then under your seal, distinctly and openly, you send the Record and Proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States together with this Writ, so that you may have the same at Washington, D. C., on the 16th day of August, 1911, in the said Supreme Court, to be then and there held, that the Record and Proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States the 19th day of July, in the year of our Lord, one thousand nine hundred and eleven.

[Seal of U. S. Circuit Court, South. Dist. Florida.]

EUGENE O. LOCKE,

Clerk U. S. Circuit Court, Southern District of Florida.

Allowed by
WM. B. SHIPPARD, *Judge*.

18 *Citation.*

In the Circuit Court of the United States for the Southern District of Florida.

Assumpsit. Damages, $1,000.

CRAWFORDSVILLE STATE BANK
vs.
J. W. SPRINGSTEAD, J. C. BURWELL, W. A. FULTON, W. R. AYERS, W. P. TUCKER, W. HOE SMITH, H. C. MICKLER.

United States of America to Crawfordsville State Bank, a corporation organized and existing under the laws of the State of Indiana:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be held in the City of Washington in the District of Columbia, on the Sixteenth day of August, 1911, pursuant to an order allowing a writ of error filed and entered in the Clerk's office of the Circuit Court of the United States, for the Southern District of Florida, from a final judgment entered on the eighteenth day of February, 1911, in that certain suit wherein the Crawfordsville State Bank, a corporation under the laws of the State of Indiana, was plaintiff and J. W. Springstead, J. C. Burwell, W. A. Fulton, W. R. Ayers, W. P. Tucker, W. Hoe Smith, and H. C. Mickler were defendants, to show cause, if any there be, why the judgment rendered against the said defendants as in the said order allowing appeal mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable William B. Sheppard, Uni
trict Judge for the Northern District of Florida, a
Judges of the Circuit Court of the United States of A
Fifth Judicial Circuit, this the 19th day of July, 19 11
Independence of the United States the 135.

[SEAL.] WM. B. SHEPPA ited States Dis-
United States District Judg nd one of the
Northern Distri merica, of the
911, and of the

E. O. LOCKE, *Clerk.*

19 I hereby acknowledge receipt of copy of D,
citation this the 24th day of July, 1911. *e of the*
t of Florida.

PETER O. K
F. B. COOGLI
Attorneys for Plaintiff, Crawfordsvill

the foregoing

Endorsed "J. W. Springstead et al., Plaintiffs in
fordsville State Bank, Defendants in Error. Citatio IGHT,
8, 1911. E. O. Locke, Clerk." R.
State Bank.

20 *Clerk's Certificate.* rror, vs. Craw-
. Filed Aug.

United States Circuit Court, Southern District

Assumpsit. Damages, $1,000.00.

THE CRAWFORDSVILLE STATE BANK
vs. Florida.
J. W. SPRINGSTEAD, J. C. BURWELL, W. A. FULTON,
W. HOG SMITH, H. C. MICKLER, and W. I

I, Eugene O. Locke, Clerk of the Circuit Cour
States for the Southern District of Florida, do her
the foregoing printed, written and typewritten J. P. TUCKER.
from "1" to "19" inclusive, is a full, true and co YERS,
of so much of the record in the above entitled cause a
ment of errors and proceedings and papers upon of the United
ment was numbered as is necessary to present the e certify that
s numbered
dition.

In testimony whereof I hereunto set my hand nete transcript
the seal of said Court at Jacksonville in said Distri of the assign-
of August, A. D. 1911. h said judg-
tion of juris-

[Seal of U. S. Circuit Court, South. Dist. Flo
tify and affix
his 10th day

KE, *Clerk.*

21 UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable the Judges of the Circuit Court of the United States for the Fifth Circuit, Southern District of Florida, Greeting:

Because in the Record and Proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, or some of you, between Crawfordsville State Bank, a corporation, Plaintiff, Defendant in Error, and J. W. Springstead, J. C. Burwell, W. A. Fulton, W. P. Tucker, W. Hoe Smith, H. C. Mickler, and W. R. Ayers, Defendants, Plaintiffs in Error, a manifest error hath happened, to the great damage of the said J. W. Springstead, et al, Defendants, Plaintiffs in Error, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the Record and Proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States together with this Writ, so that you may have the same at Washington, D. C. on the 10th day of August, 1911, in the said Supreme Court, to be then and there held, that the Record and Proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States the 19th day of July, in the year of our Lord, one thousand, nine hundred and eleven.

[Seal of U. S. Circuit Court, South. Dist. Florida.]

EUGENE O. LOCKE,
Clerk U. S. Circuit Court, Southern District of Florida.

Allowed by

WM. B. SHEPPARD, *Judge.*

This writ of error is hereby returned by transmitting herewith under my hand and the seal of the U. S. Circuit Court, Southern District of Florida, a true copy of the record, assignment of errors and all proceedings in the case cited (I do include in the record) this Eleventh day of August, A. D. 1911.

E. O. LOCKE,
Clerk U. S. Circuit Court, Southern District of Fla.

[Endorsed:] In the Supreme Court of the United States. J. W. Springstead et al., Plaintiffs in Error, vs. Crawfordsville State Bank, Defendants in Error. Writ of Error to U. S. Circuit Court, So. District of Florida. Filed July 19th, 1911. E. O. Locke, Clerk U. S. Circuit Court, So. Dist. of Florida.

22 In the Circuit Court of the United States for the Southern District of Florida.

Assumpsit. Damages, $1,000.

CRAWFORDSVILLE STATE BANK
vs.
J. W. SPRINGSTEAD, J. C. BURWELL, W. A. FULTON, W. R. AYERS, W. P. TUCKER, W. HOP SMITH, H. C. MICKLER.

United States of America to Crawfordsville State Bank a corporation organized and existing under the laws of the State of Indiana, you are hereby cited and admonished to be and appear at the Supreme Court of the United States to be held in the City of Washington in the District of Columbia on the Sixteenth day of August, 1911, pursuant to an order allowing a writ of error filed and entered in the Clerk's office of the Circuit Court of the United States, for the Southern District of Florida, from a final judgment entered on the eighteenth day of February, 1911, in that certain suit wherein the Crawfordsville State Bank a corporation under the laws of the State of Indiana was Plaintiff, and J. W. Springstead, J. C. Burwell, W. A. Fulton W. R. Ayers, W. P. Tucker, W. Hop Smith and H. C. Mickler were defendants, to show cause, if any there be, why the judgment rendered against the said defendants as in the said order allowing appeal mentioned, should not be corrected and so the justice should not be done to the parties in that behalf.

Witness the Honorable William B. Sheppard, United States District Judge for the Northern District of Florida, and one of the Judges of the Circuit Court of the United States of America, of the Fifth Judicial Circuit, this the 19th day of July, 1911, and of the Independance of the United States, the 135.

WM. B. SHEPPARD,
United States District Judge of the Northern District of Florida.

[Seal of U. S. Circuit Court, South. Dist. Florida.]

E. O. LOCKE, *Clerk.*

I hereby acknowledge receipt of copy of the foregoing citation this the 24th day of July, 1911.

PETER O. KNIGHT,
F. B. COOGLER,
Attorneys for Plaintiffs Crawfordsville, State Bank.

[Endorsed:] J. W. Springstead et al., Plaintiffs in Error, vs. Crawfordsville State Bank, Defendants in Error. Citation. Filed Aug. 8, 1911. E. O. Locke, Clerk U. S. Circuit Court, Southern District of Florida.

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BRIEF OF COUNSEL FOR PLAINTIFFS IN ERROR

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1913

No. 93

J. W. SPRINGSTEAD, J. C. BURWELL, W. A. FULTON, ET AL., PLAINTIFFS IN ERROR.

vs.

CRAWFORDSVILLE STATE BANK, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

(22,854)

THE E. O. PAINTER PRINTING CO., DE LAND, FLA.

22,854

SUPREME COURT OF THE UNITED STATES

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No. 93

J. W. SPRINGSTEAD, J. C. BURWELL, W. A. FULTON, ET AL., PLAINTIFFS IN ERROR,

vs.

CRAWFORDSVILLE STATE BANK, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

BRIEF OF COUNSEL FOR PLAINTIFFS IN ERROR.

STATEMENT OF CASE.

This case comes up by writ of error from the Circuit Court for the Southern District of Florida, after final judgment entered against the Plaintiffs in Error, as the Defendants in the court below, for the sum of $3,100.00 damages and $53.40 costs (transcript page 7). The amount recovered for damages was composed of $2,000.00 principal on two notes, $900.00 interest, and $200.00 attorneys' fee.

The suit was instituted on two promissory notes for $1,000.00 each, given by the Plaintiffs in Error and certain other persons, as will be seen by

reference to the notes, copies of which appear on pages 4 and 5 of the transcript. The notes were joint and several and provide for the recovery of attorney's fee if suit were brought.

By reference to the transcript, page 3, it will be seen that the notes were made payable to the order of J. Crouch & Son, and by them endorsed to the Plaintiff in the court below.

Diversity of citizenship between the Crawfordsville State Bank and the defendants below is shown and apparently relied upon to confer jurisdiction on the Circuit Court. (Transcript, page 3.)

Defendants below entered their appearance Jan. 3, 1910, (pages 2 and 3 transcript) and for want of plea or demurrer, judgment by default was entered against them April 4, 1910, (page 6 transcript). The cause came on at a regular term of the Court and, upon the plaintiff offering proof before a jury, the defendants moved to dismiss for want of jurisdiction. (Page 6 transcript.) This motion was over-ruled, and upon default judgment, the jury brought in a verdict for the Plaintiff and judgment was entered for the sum hereinbefore mentioned. (Page 7 transcript.)

From this judgment writ of error to this Court was allowed, (page 8 transcript) and the Plaintiffs in Error assign as error in the court below, the following: (Page 9 transcript.)

First—Entertaining cause in the first instance, want of jurisdiction appearing.

Second—Entering default judgment for the same reason.

Third. Entering final judgment for the same reason.

Argument.

I.

Amount in Controversy Not Sufficient to Confer Jurisdiction.

It will be noticed that the notes, two in number, are each for the sum of one thousand dollars, and contain the provision: "If suit is brought on this note we promise and agree to pay a reasonable attorney's fee."

Can the amount of such fee be included, together with the face of the notes, in ascertaining the "matter in dispute?" We submit that this cannot be done and that such fee is not contemplated by the act fixing the jurisdiction of the District and Circuit Courts.

Revised Statutes, §629. That the Circuit Courts of the United States shall have original cognizance, concurrent with the Courts of the several States, of all suits of a civil nature, at common law or in equity, where the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars.

It will doubtless be conceded that the United States Circuit Court, as it existed prior to the adoption of the Judiciary Act of 1911, was a court of limited jurisdiction, dependent upon the act creating it for the right to entertain causes of any nature, and that in suits dependent upon diversity of citizenship for jurisdiction the matter in dispute

"reasonable attorney's fees" provided for in the notes. This being true, it would be impossible for such fee to be a portion of the matter in dispute as defined by this court in the two cases last cited. It could not be a part of the matter for which the suit was brought, for the fee would not be due in part until the bringing of the suit, and could not be due in full until its conclusion, for the fee is to be regarded as compensation to the attorney for his services throughout the litigated matter, and must be based upon such services. A jury must determine whether or not the defendants owe the plaintiff the sum of two thousand dollars before it could in any sense be regarded as the arbiters of the dependent proposition as to how much or what sum should be allotted in addition to the principal and interest as fee for the Plaintiff's attorney. Independent of the exceptions noted in the statute, "interest and costs," it would seem that the attorney's fee could not be a part of the matter in dispute. It was clearly the intention of Congress to limit the Circuit Court's jurisdiction to a class of cases limited in amount in excess of two thousand dollars. In addition, costs and interest on the demand were not to be considered.

We have not lost sight of the fact that in two instances the Circuit and District Courts have held to the contrary doctrine.

Rogers v. Riley, 80 Fed. 759.

Howard v. Carroll, 195 Fed. 646.

Neither of these cases are directly in point for

must exceed, exclusive of interest and costs, the sum or value of two thousand dollars. It is also beyond controversy that there is no presumption in favor of the jurisdiction of such courts, and that it is to be presumed that the cause is outside the jurisdiction of the court unless the facts conferring jurisdiction appear affirmatively in some manner in the record.

It is in line with these well recognized principles that the Statute upon which a court of limited jurisdiction relies for its jurisdiction is also to be construed most strongly against the jurisdiction of the court, when there is any question as to such jurisdiction.

The term "matter in dispute" is, in itself, a term with well recognized meaning.

Lee v. Watson, 68 U. S. 337, text, 339; 17 L. Ed. 557, 558. By matter in dispute is meant the subject of litigation—the matter for which the suit is brought—and upon which issue is joined, and in relation to which jurors are called and witnesses examined.

Smith v. Adams, 130 U. S. 167, 9 Sup. Ct. 566-569. By matter in dispute is meant the subject of litigation—the matter upon which the action is brought and issue joined and in relation to which, if the issue be one of fact, testimony is taken.

An examination of the notes sued on in this case will show that each is for the sum of one thousand dollars, and that the bringing of the suit was a necessary condition to the accruing of the

the reason that in neither is the recovery of the attorney's fee limited by the contract sued upon to the bringing of the suit, as is true of the present case.

In still another case it has been held that attorney's fee could not under the laws of the State of Georgia, be considered where dependent upon statute providing for reasonable attorney fee upon insurance policy when suit was brought after nonpayment for a period of sixty days. Peters v. Queen Ins. Co. 182 Fed. 113.

The present case seems to be within the distinction between the principal demand and the accessory demand as defined in the case of Brown v. Webster, 15 Sup. Ct. Rep. 377. The principal demand seems to be the principal of the two notes; and the attorney fee, dependent thereon, the accessory. Had the plaintiff been suing for damages growing out of the payment of the two notes with attorney fee as a separate transaction, then it would seem that the fee might be regarded as a part of the principal demand. Especially is this true, when, as in the present case, the fee is to be paid in the event suit is brought on the notes, and not if placed in the hands of an attorney for collection, as are so many notes.

II.

No Allegation in the Declaration or Elsewhere of the Citizenship of the Payee of the Note Sued On.

It is well established that when suit is brought on a negotiable instrument of the character sued on

here, the assignee can bring suit in the Federal Courts, only where diversity of citizenship is the ground for the jurisdiction of the court, in the event the original payee could have brought suit on such instrument in such courts, and the fact of the necessary diversity of citizenship between the maker and the payee of the note sued on must of necessity be shown affirmatively; else such court has no jurisdiction. Many decisions of this court bear out this proposition.

Mansfield C. & L. M. Ry. Co. v. Swan, 111 U. S. 379, 4 Sup. Ct. 510.

King Iron Bridge Co. v. County of Otoe, 120 U. S. 225, 7 Sup. Ct. 552.

Parker et al. v. Ormsby, 141 U. S. 81, 11 Sup. Ct. 912.

Plant I. Co. v. J. T. & K. W. Ry. Co. 152 U. S. 71, 14 Sup. Ct. 483.

Emsheimer v. City of New Orleans, 22 Sup. Ct. 770.

There are many other decisions of this court, both under the older acts and the one in force when this suit was commenced.

By reference to the notes and the declaration in the case, (pages 3, 4 and 5 of transcript), it will be seen that the notes were given to J. Crouch & Son and by them assigned to the plaintiff in this case. There is no allegation in the record of the citizenship of J. Crouch & Son. The absence of such allegation will, of itself, deprive the Circuit Court of jurisdiction to try the case, and makes it plain that the defendants' motion appearing on

page 6 of the transcript to dismiss for want of jurisdiction, should have been granted, even though no other question as to the court's right to hear existed.

III

Conclusion

In conclusion, we respectfully submit to the court that, in any event, the cause should be dismissed here.

Should this court find that the jurisdictional amount is insufficient, permission to amend would afford no fruitful opportunity to the Plaintiff in the court below. Should the court fail to find that the jurisdictional amount is insufficient, we still submit that the cause should be dismissed or remanded with direction to dismiss for the reason that to allow amendment in the District Court would, in effect, confer upon that court jurisdiction at this time to hear and determine a cause wherein the jurisdictional amount (even including attorney's fee) is less than three thousand dollars. Since the commencement of this suit the jurisdictional amount of the District Court, as a substitute for the Circuit Court, has been raised to that sum. The effect of amendment as to citizenship of the payee of the note, if it develops that such amendment can, as a matter of fact be made, would bring the case for the first time in the District Court and would be practically the commencement of a suit there. The defendants would clearly be entitled to plead to the declaration as amend-

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SUPREME COURT, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 93.

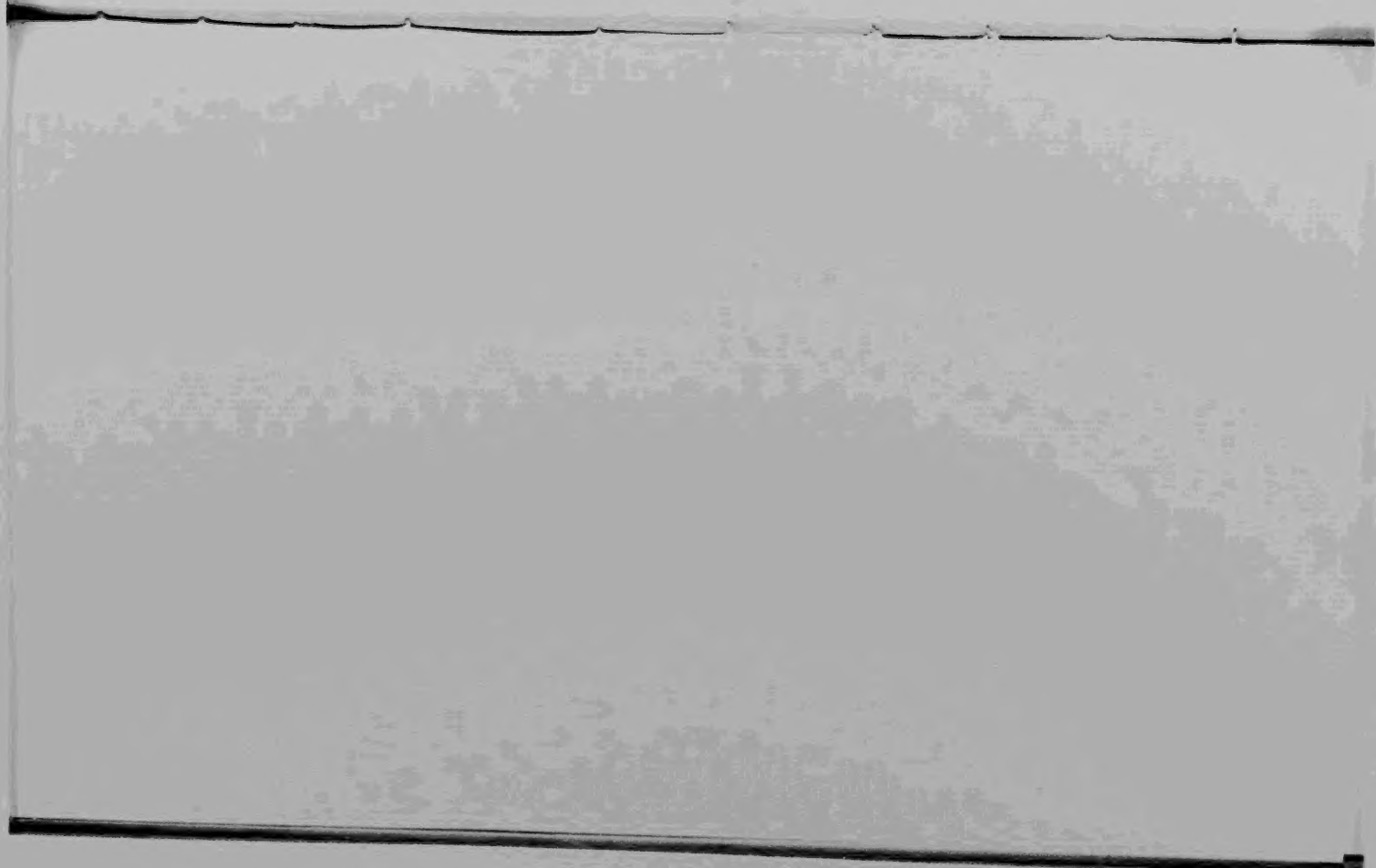
J. W. SPRINGSTEAD, J. C. BURWELL, W. A. FULTON, ET AL., PLAINTIFFS IN ERROR,

vs.

CRAWFORDSVILLE STATE BANK, DEFENDANT IN ERROR.

BRIEF FOR DEFENDANT IN ERROR.

PETER O. KNIGHT,
C. FRED THOMPSON,
Attorneys for Defendant in Error.



SUBJECT INDEX.

	Pages.
Statement of case	1-2
Where by express stipulation valid in the State where made a debtor becomes liable for a reasonable attorney's fee in case the debt is collected by suit, such fee may be added to the amount of the debt for the purpose of making up the jurisdictional amount. Such a fee is not a part of the costs, which are to be excluded under the judiciary act of 1887 and 1888	3-6
Brown *vs.* Webster, 156 U. S., 328; 39 L. Ed., 440	6
Continental Casualty Co. *vs.* Spradlin, 170 Fed., 322	6
Howard *vs.* Carroll, 195 Fed., 646	6
Loss *vs.* English, 85 Fed., 471	7
Rogers *vs.* Riley et ux., 80 Fed., 739	4
Attorney's fees expressly stipulated for in promissory notes are not considered costs, but are calculable in determining the amount in controversy	3-7
Almand *vs.* Almand, 95 Ga., 294	5
Altgelt *vs.* Harris, 11 S. W., 857	5
Baxter *vs.* Bates, 69 Ga., 587	4
Beach *vs.* Atkinson, 13 S. E., 501	5
Blankenship *vs.* Warnicsky, 6 S. W., 143	4
Brown *vs.* Webster, 156 U. S., 328; 39 L. Ed., 440	6
Clark *vs.* Brown, 18 Texas, 212	5
Continental Casualty Co. *vs.* Spradlin, 170 Fed., 322	6
Encyc. of Pleading and Practice, vol. 1, p. 715, note 4	4
Fix *vs.* Sissung, 47 N. W., 340	5
Florida Central & Peninsular R. R. Co. *vs.* Seymour, 33 Sou., 424	8
Hill *vs.* Haas, 73 Ga., 122	5
Howard *vs.* Carroll, 195 Fed., 646	6
Loss *vs.* English, 85 Fed., 471	7
Moore *vs.* Foy, 15 S. W., 130	5
Parks *vs.* Granger et al., 51 Sou., 716	6
Rogers *vs.* Riley et ux., 80 Fed., 739	4
Warder *et al. vs.* Raymond, 64 N. W., 525	5
Waters *vs.* Walker, 17 S. W., 1085	5
A stipulation for the payment of a reasonable amount as attorney's fees is valid in the State of Florida	7
Adams *vs.* Fry, 29 Fla., 318	7

Carhart *vs.* Allen, 56 Fla., 763 7
Cooper Grocery Co. *vs.* Citizens' Bank and Trust Co., 62 Fla., 142 7
Durham *vs.* Stephenson *et al.*, 41 Fla., 112 7
Kellogg *vs.* Singer Mfg. Co., 35 Fla., 99 7
L'Engle &Hartridge *vs.* L'Engle, 21 Fla., 131 7
Logan *vs.* Slade *et al.*, 28 Fla., 699 7
Long *vs.* Herrick, 26 Fla., 356 7
Merrell *vs.* Ridgely *et al.*, 62 Fla., 546 7
Taylor *vs.* Brown, 32 Fla., 334 8
Florida case as to principle involved and as to form of declaration conclusive of this case 8–11
Florida Central & Peninsular R. R. Co. *vs.* Seymour, 33 Sou. Rep., 424 8
The court will take judicial cognizance of the fact that attorney's fees in controversy are of some value 10
Colley *et al. vs.* Wolcott *et al.*, 187 Fed., 595 10
When declaration not sufficiently precise as to form leave will be given to amend without remanding cause for that purpose 10
Williams *vs.* Molther *et al.*, 198 Fed., 462 10
Plaintiff's allegations of value govern in determining the jurisdiction, except where, upon the face of his own pleadings, it is not legally possible for him to recover the jurisdictional amount 11
Howard *vs.* Carroll, 195 Fed., 646; text, 647 11
Schunk *vs.* Moline, 147 U. S., 500; 37 L. Ed., 25 11
Smithers *vs.* Smith, 204 U. S., 642; 51 L. Ed., 656 11
Upton *vs.* McLaughlin, 105 U. S., 640; 26 L. Ed., 1197 11

IN THE

SUPREME COURT OF THE UNITED STATES.

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CRAWFORDSVILLE STATE BANK, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

BRIEF FOR DEFENDANT IN ERROR.

Statement of the Case.

On the 1st of October, 1909, defendant in error brought suit against plaintiffs in error in the United States Circuit Court for the Southern District of Florida, at common law,

to enforce the payment of two notes for $1,000 each, given January 22, 1906, one due October 1, 1908, and one due October 1, 1909. A copy of the notes will be found on pages 4 and 5 of the transcript of the record. In both the notes there is this provision, "If suit is brought on this note, we promise and agree to pay a reasonable attorney's fee."

The amended declaration was filed on the 7th of March, 1910. A copy of the same will be found on pages 3, 4, and 5 of the transcript of the record. The conclusion of the declaration is as follows: "Wherefore, plaintiff brings this suit and claims the sum of two thousand dollars ($2,000.00), with interest thereon at the rate of eight per cent per annum from January 22, 1906, until paid, interest payable annually, together with reasonable attorney's fee for bringing this suit. And plaintiff claims damages in the sum of four thousand dollars."

At the February term, 1911, of the United States court, the defendant moved in open court to dismiss the cause for lack of jurisdiction, which motion was argued and denied. And thereafter the cause was submitted to a jury, a verdict found for the plaintiff for twenty nine hundred dollars, and an attorney's fee of two hundred and ninety dollars. Thereafter a judgment was by the court entered in favor of the plaintiff and against the defendants for three thousand one hundred and ninety dollars ($3,190.00) damages by plaintiff sustained, as well as fifty-three dollars and forty cents ($53.40) costs, and ordering execution to issue.

A writ of error has been prayed for and issued, and the only question involved in this case is as to whether or not, because of the amount involved in the controversy, the court had jurisdiction to entertain the cause and enter up the judgment.

ARGUMENT.

At the time of the institution of the suit the lower court had jurisdiction in controversies of this character, where the matter in dispute exceeds, exclusive of interest and costs, the sum or value of $2,000, and the only inquiry in this cause is whether or not the attorney's fee, which is thus contracted for in the notes in question, is to be considered as costs within the meaning of the statutes conferring jurisdiction upon the court, or should it be calculated as a liability in estimating the amount in controversy.

The suit is upon two notes for $1,000 each, exclusive of interest and costs, upon which no payments had been made, and the amount of the principal of the notes amounted therefore, to $2,000, and the provision in the notes has been stated, the same being a promise on the part of the makers of the note to pay a reasonable attorney's fee if suit was brought on the note, and the plaintiffs in the declaration, suing for the principal, interest, and reasonable attorney's fee for bringing the suit, claimed damages in the sum of $1,000.

The only theory upon which the jurisdiction of the court below could be defeated would be that the attorney's fee was no part of the amount in controversy in the contractual obligation of the makers of the notes, but that it should simply be taxed as costs in the case. If upon the contrary the promise to pay attorney's fees was a contractual obligation upon the part of the makers of the notes, then it would be a part of the amount in controversy. And if the attorney's fees only amounted to one cent the court would have jurisdiction, because then the amount in controversy would be two thousand dollars and one cent, or in excess of $2,000, exclusive of interest and costs. This matter has been adjudicated by a number of the courts, and I am unable to find any authority holding that attorney's fees should be taxed as costs when

the payment of attorney's fees had been made a contractual obligation.

In the case of Rogers *vs.* Riley *et al.*, 80 Federal Reporter, 759, the court held that—

> "Where, by express stipulation valid in the State where made, a debtor becomes liable for a reasonable attorney's fee in case the debt is collected by suit, such fee may be added to the amount of the debt for the purpose of making up the jurisdictional amount. Such a fee is not a part of the costs, which are to be excluded under the judiciary act of 1887 and 1888."

In the first volume of Enevc. of Pleading and Practice, page 715, note 4, it is said:

> "Attorney's fees especially stipulated for in promissory notes are not considered costs, but are calculable in determining the amount in controversy."

In Blankenship *vs.* Warnicky, 6 S. W., 143, the court says:

> "Attorney's fees are not regulated by statute and are not taxed as costs in this State. Attorney's fees spring out of the contract on account of the failure of the maker to perform it, are incidental to it, and arise from the express agreement of the parties, and are as much a part of the controversy, or a matter in dispute, as the debt itself. If the attorney's fee was allowed by law, it would then, probably, be held to be a part of the costs of suit and not a subject of dispute or controversy."

In the case of Baxter *vs.* Bates, 69 Ga., 587, the court said that—

> "Where a note sued on provides for the collection of attorney's fees in addition to the principal, in case of suit, and such sum and fee together make an amount beyond the jurisdictional limit, the jurisdiction of the court is ousted."

In the case of Altgelt *vs.* Harris, 11 S. W., 857, a case in point, the court says:

> "A note for $194.00 provided for 10 per cent attorney's fees. *Held*, that the collection fees could be considered on the question of the jurisdiction of the district court of an action on the note. As the amount collectible, including such fee, would exceed two hundred dollars, the district court had jurisdiction."

And the court, in its opinion, uses this language:

> "When a note was placed in the hands of an attorney for collection, after its maturity, or when suit was brought, the contingency upon which the attorney's fees were to be added to the debt had happened, and the attorney's fees became a part of the debt, not in the nature of costs or interest, but as principal. It has been held several times in this State, and it has been held that attorney's fees will be considered in determining the question of jurisdiction. The attorney's fees being added to the amount due on the note as principal only made the amount collectible on it, exclusive of interest, $213.10, an amount of which the justice court had no jurisdiction."
>
> Clark *vs.* Brown, 18 Texas, 212.
> Fix *vs.* Sissung, 17 N. W., 340.
> Waters *vs.* Walker, 17 S. W., 1085.
> Moore *vs.* Fox, 15 S. W., 199.
> Warder *et al. vs.* Raymond, 64 N. W., 525.
> Beach *vs.* Atkinson, 13 S. E., 591.
> Hill *vs.* Haas, 73 Ga., 122.
> Ahnaud *vs.* Ahnaud, 95 Ga., 204.

And this last case is especially significant, as it was decided on reargument questioning this principle. The court reaffirmed the principle, saying:

> "That the attorney's fees constitute a part of the principal debt is decided by a long and universal current of cases in this State. Counsel for plaintiff in error, conceiving that these decisions were founded on a misapprehension upon the part of this court of the true law controlling the subject therein adjudi-

> cated, asked leave to review them. This request was granted, and upon consideration thereof we are well satisfied with the correctness of the principle there declared. The attorney's fees are not in any sense interest, nor are they any accretion upon the principal. The stipulation for their payment is a covenant independent of principal or interest, and the mention of them is only incidental as a means of computing and estimating the sum which the defendant undertakes to pay in the event the plaintiff is forced to bring suit. The joinder of this demand with what is stated as technical principal makes the principal debt for recovery of which this action is brought, exclusive of interest, exceed the sum of $100, and this it is that renders the judgment void."

In the case of Parks *vs.* Granger *et al.*, 51 Sou. Rep., 716, the court said:

> "Though a note which stipulates for 10 per cent attorney's fees, if sued on, is for less than $200, if the principal of the note, together with the attorney's fees exceeds that sum, a justice of the peace has no jurisdiction of the suit."

And see—

> Continental Casualty Company *vs.* Spradlin, 170 Fed., 322.

In the case of Howard *vs.* Carroll, 195 Fed., 646, headnote 2, the court held:

> "An attorney's fee contracted to be paid by the maker of a note stipulating for interest, and costs of collection, including an attorney's fee, is a part of the amount in controversy, where the declaration in an action on the note asserts that the principal of the note and the attorney's fee is in controversy, and the court in determining the amount in controversy must take into consideration the amount of the attorney's fee."

See also—

> Brown *vs.* Webster, 156 U. S., 328; 39 L. Ed., 440.

In the case of Loss *vs.* English, 83 Fed., 171, it was held that the court did not have jurisdiction to foreclose a mortgage for $2,000, the bill alleging that plaintiff advanced an additional $2.25 to pay the fee for recording the mortgage, for which defendant was liable to him. By reading the text, however, on pages 173 and 174, it will be seen that the court was of the opinion, and so states therein, that if the mortgagor had expressly agreed in the mortgage to pay the recording fee, then the obligation would have been contractual, and the court would have had jurisdiction of the case because the amount involved would have been $2,002.25.

See also the case of Peters *vs.* Queen Insurance Company, 182 Fed., 113, where the district court for the southern district of Georgia held that the court did not have jurisdiction because the attorney's fees were provided by statute, and hence having been provided by statute were a penalty and costs and could not be included in order to make up the jurisdictional amount.

The Supreme Court of Florida, in Logan *vs.* Slade & Etheredge *et al.*, 28 Fla., 699, held that—

> "A stipulation for the payment of attorney's fees does not void a contract for the payment of money of which it is a part, nor is a stipulation for the payment of a reasonable amount as attorney's fees illegal."

See also—

L'Engle & Hartridge *vs.* L'Engle, 21 Fla., 131.
Long *vs.* Herrick, 26 Fla., 356.
Adams *vs.* Fry, 29 Fla., 318.
Taylor *vs.* Brown, 32 Fla., 334.
Kellogg *vs.* Singer Manufacturing Company, 35 Fla., 99.
Durham *vs.* Stephenson *et al.*, 41 Fla., 112.
Carhart *vs.* Allen, 56 Fla., 763.
Cooper Grocery Co. *vs.* Citizens Bank & Trust Co., 62 Fla., 142.
Merrell *vs.* Ridgely and others, 62 Fla., 546.

It seems to me, however, that this case is concluded by the decision in the case of Florida Central & P. R. R. Co. *vs.* Seymour, decided by the Supreme Court of Florida and reported in 33 Sou., 424.

The constitution of Florida ordains that:

> "Circuit courts shall have exclusive original jurisdiction in all cases in equity, also in all cases at law not cognizable by inferior courts."
>
> "The justices of the peace shall have jurisdiction in cases at law in which the demand or value of the property involved does not exceed $100."
>
> Section 11, Article 5, and section 22, Article 5, as amended, of the constitution.

Under this provision of the constitution suit was brought by Seymour against the Florida Central & Peninsular Railroad Company in one of the circuit courts of Florida, which courts have jurisdiction only in cases involving an amount exceeding $100. The declaration in the case was in damages for the negligent killing by the railroad company of a cow belonging to Seymour of the value of $100, the declaration alleging that "written demand had been made on J. H. Congleton, stock claim agent of the corporation, for the value of said cow, at $100—which amount has never been paid—together with a prayer for reasonable attorney's fees incurred in collecting same by suit to the plaintiff's damage, $350." The court, on page 425 of the opinion, says:

> "The only contention made here in support of this assignment is that the declaration shows that the court had no jurisdiction over the subject-matter of the action, for the reason that the plaintiff's demand does not exceed $100. The declaration does not claim double damages on account of the failure of the defendant to fence its tracks as required by statute, but simply the value of the cow, by reason of the alleged negligent killing, and attorney's fees. This value is alleged in the declaration to be $100, and reasonable attorney's fees were also claimed. The two items

mentioned exceed in value $100, and th
the case within the jurisdiction of the
While this court does not sustain the
toy's fees, it is evident that this item
good faith, and the circuit court was of
ought to be allowed. The fact that
and appear in that opinion does not
tion of the circuit court's jurisdiction
the question of jurisdiction is not to
by the sum recovered, but by the am
mand involved. The plaintiff had a ri
claim for attorney's fees, made in goo
cided; and, as he claimed $100 as t
ceed, a justice of the peace could not
cide his right to recover that sum an
torney's fees, because the amount
$100, the limit of the justice's juri
action was therefore properly within
of the circuit court."

This case is especially significant, because the Court, in adjudicating the question, held that, under the statute, an attorney's fee was not allowable; the appellate court sustained the jurisdiction of the lower court, because claim for attorney's fees was made in good faith. This case is forceful and conclusive of this case, because the prayer in the petition was identically the same as in the instant case, the prayer being for reasonable attorney's fees incurred in collecting same by suit, etc. In other words, no more was stated in the declaration as being the amount to be due as attorney's fees.

And it seems to me that under the provisions of Section 914 of the United States Revised Statutes, providing "the practice, pleadings and forms and modes of proceeding in civil causes, other than equity and admiralty causes, in the circuit and district courts, shall conform as near as may be to the practice, pleadings and forms and modes of proceedings existing at the time in like causes in the

record of the State within which such circuit or district courts are held, any rule of court to the contrary notwithstanding;" and under the provisions of section 721 of the United States Revised Statutes, providing that "the laws of the several States, except where the Constitution, treaties or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law in the courts of the United States, in cases where they apply," the above quoted Florida case should be followed by this court.

The allegation, however, in the declaration, claiming an amount due without specifying it, as a reasonable attorney's fee, is a sufficient allegation of damages; and if it were not this court would certainly give the plaintiff leave to amend, without remanding the case to the lower court simply for that purpose. (See in point Williams *vs.* Molther *et al.*, 198 Fed., text 962.) And if the court thinks an amendment of the declaration is necessary, so as to make it more precise, leave is now asked to amend the declaration so as to insert between the words "with" and "reasonable" in next to the last clause of the declaration, on page 4 of the transcript of the record, the following words, "the sum of three hundred dollars as a."

This court would certainly take judicial cognizance of the fact that the attorney's fees in controversy were of some value, and if they were of the value of one cent the lower court had jurisdiction.

See—

Colley *et al. vs.* Wolcott *et al.*, 187 Fed., 595.

All that can be said of the declaration is that it did not state the specific amount that plaintiff claimed as a reasonable attorney's fee. But this amount could not be stated, because a *reasonable* attorney's fee only was contracted for, and a reasonable attorney's fee would be dependent upon proof adduced in the cause. Therefore, no specific amount

could be claimed in the declaration. The declaration does show that, exclusive of interest and costs, $2,000 was due, and this $2,000 was demanded in addition to a reasonable attorney's fee and alleging damages in the sum of $1,000. It seems to me that this was an affirmative showing of the jurisdictional amount; but even if it did not affirmatively show the jurisdictional amount, this would not defeat the court of its jurisdiction.

See—

Howard *vs.* Carroll, 195 Fed., 646, text 647.

Upton *vs.* McLaughlin, 105 U. S., 640; 26 L. Ed., 1197.

Schunk *vs.* Moline, 147 U. S., 500; 37 L. Ed., 255.

Smithers *vs.* Smith, 204 U. S., 642; 51 L. Ed., 656.

In the last case the court held that—

> "The rule that the plaintiff's allegations of value govern in determining the jurisdiction, except where, upon the face of his own pleadings it is not legally possible for him to recover the jurisdictional amount, controls, even where the declaration shows that a perfect defense might be interposed to a sufficient amount of the claim to reduce it below the jurisdictional amount."

The above authorities are certainly conclusive of the sufficiency of the declaration. The court had jurisdiction. The amount involved was in excess of $2,000, exclusive of interest and costs. And it is respectfully submitted that the judgment of the lower court should be affirmed.

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23

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 93.

J. W. SPRINGSTEAD, J. C. BURWELL, W. A. FULTON ET AL., PLAINTIFFS IN ERROR,

vs.

CRAWFORDSVILLE STATE BANK, DEFENDANT IN ERROR.

SUPPLEMENTAL BRIEF FOR DEFENDANT IN ERROR.

PETER O. KNIGHT,
C. FRED THOMPSON,
Attorneys for Defendant in Error.

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Since the preparing, printing, and filing of brief for defendant in error we have received a copy of the brief of plaintiffs in error, and for the first time the question is raised that there is no allegation in the declaration or elsewhere of the citizenship of the payee of the note sued on, the note being payable to J. Crouch & Son and endorsed to the Crawfordsville State Bank and the suit in question being one by the Crawfordsville State Bank against the plaintiffs in error.

As a matter of fact the original payees of the note are citizens of a State other than the State of Florida, and had this been called to the attention of the court below or to

our attention the declaration would have been amended; but no objection has been taken to the form of the declaration until the filing of plaintiffs' brief. If the court is of the opinion that the declaration is defective for this reason, we respectfully ask that the cause be remanded, with instructions to dismiss the suit for want of jurisdiction unless the defendant in error, by leave of the court below and within such time as it may prescribe, amends the declaration so as to present a cause within its jurisdiction. This was the course pursued, and such an order was made, in the case of Parker *vs.* Ormsby, 141 U. S., 81; 35 L. Ed., 654, one of the cases cited in counsel's brief.

Unless this is done serious loss will occur to the defendant in error, for the reason that one of the notes was due on the 1st of October, 1908, and the statute of limitations in this State giving the right to sue on promissory notes for a period of five years only, no suit could be instituted in the State court on the $1,000 note (see subdivision 3, section 1725, General Statutes of the State of Florida, 1906), whereas, if leave is given to amend, no injustice will be done to the defendants if they have a meritorious defense to the notes in question.

The fact that the jurisdictional amount has been raised from $2,000 to $3,000 during the pendency of this suit cannot affect any rights that the parties to this suit may have, all of their rights being saved under the provisions of section 299 of the Judicial Code of the United States, in force January 1, 1912.

We desire to call the attention of the court to an error appearing on page 1 of the original brief for defendant in error. The date "1st of October, 1909," should be the 1st of December, 1909, as appears from the transcript of record.

All of which is respectfully submitted.

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C. FRED THOMPSON,
Attorneys for Defendant in Error.

such an attorney's fee be considered in determining whether the jurisdictional amount was involved? We think so. Clearly such fee was no part of the costs, nor was it interest. It may be that the agreement to pay an attorney's fee in the event of suit created only an accessory right (though under *Brown* v. *Webster*, 156 U. S. 328, this is doubtful), but nevertheless it gave a right to recover and created a legal obligation to pay. It is true its effectiveness was dependent upon suit being brought, yet the moment suit was brought the liability to pay the fee became a "matter in controversy" and as such to be computed in making up the requisite jurisdictional amount. *Brown* v. *Webster*, 156 U. S. 328, and this has been the rule since applied by lower Federal courts. *Rogers* v. *Riley*, 80 Fed. Rep. 759; *Casualty Company* v. *Spradlin*, 170 Fed. Rep. 322; *Howard* v. *Carroll*, 195 Fed. Rep. 646.

It is further urged that though the case is within the jurisdictional amount, nevertheless it was not within the competency of the court below because of a failure to allege the citizenship of the original payee of the notes. (Act of August 13, 1888, 25 Stat. p. 433, c. 866, § 1.) The contention is clearly well taken. *King Bridge Company* v. *Otoe County*, 120 U. S. 225; *Parker* v. *Ormsby*, 141 U. S. 81, 83. However, as between the plaintiff and the defendants the necessary diversity of citizenship was alleged, we are of opinion that the failure to allege the citizenship of the assignor of the paper does not compel the absolute dismissal of the case, as the error in that particular is susceptible to correction by amendment. *King Bridge Co.* v. *Otoe County*, 120 U. S. 225; *Great Southern Fire Proof Hotel Co.* v. *Jones*, 177 U. S. 449.

The argument that because subsequent to the institution of suit the jurisdictional amount was increased to allow the amendment at this time, would be giving the lower court jurisdiction of a case to which its authority does not now extend is without merit, in view of the saving

clause of § 299 of the Judicial Code, which was intended to cover such a case as this.

Reversed and remanded with direction to allow plaintiff to amend by alleging the citizenship of the original parties to the paper within such time as the court shall think proper and upon failure to do so, to dismiss for want of jurisdiction.